

**REMARKS**

In response to the Office Action dated October 15, 2009, Claims 1-6 remain unchanged and Claims 7-20 have been canceled without prejudice and disclaimer. No new subject matter has been added. Applicant respectfully requests reconsideration of this application.

Claim Changes

Claims 7-20 have been cancelled without prejudice or disclaimer.

No amendment made is related to the statutory requirements of patentability unless expressly stated herein. No amendment is made for the purpose of narrowing the scope of any claim, unless Applicant had argued herein that such amendment is made to distinguish over a particular reference or combination of references. Any remarks made herein with respect to a given claim or amendment is intended only in the context of that specific claim or amendment, and should not be applied to other claims, amendments, or aspects of Applicant's invention.

Rejection of Claims 1-4, 7-9, 12-13, and 15-20 under 35 U.S.C. § 103(a) as being unpatentable over US 6078568 (Wright) in view of US 5740167 (Taketsugu) and further in view of US 6947748 (Li)

Applicant has cancelled claims 7-9, 12-13, and 15-20. Therefore, the rejection of claims 7-9, 12-13, and 15-20 is moot in view of the cancellation. Applicant respectfully traverses the rejection of claims 1-4. Reconsideration is respectfully requested.

Applicant respectfully submits that the combination of Wright, Taketsugu, and Li does not show or suggest all the claim limitations as set forth in independent claim 1. For example, independent claim 1 recites “at a subscriber...during the step of transmitting, tracking a number of collisions on the data channel until the number of collisions reaches a threshold value indicating that the subscriber is unable to acquire sufficient bandwidth on the data channel due to collisions with other transmitting subscribers on the data channel... when the number of collisions reaches the threshold value thereby indicating that the data channel is fully utilized, transmitting a reassignment request to move to a new data channel” which is not taught or suggested in the combination of Wright, Taketsugu, and Li.

The Office Action on page 3 states that “Regarding claim 1, Wright discloses a method (fig.4 and Fig. 21) comprising the steps of: ...during the step of transmitting, tracking a number

of collisions (Fig. 21, 132, where the calculating of collision rates is considered as the tracking number of collisions) on the data channel until the number of collisions reaches a threshold value indicating that the subscriber is unable to acquire sufficient bandwidth on the data channel due to collisions with other transmitting subscribers on the data channel (Col. 4, lines 52 - lines 68 Col.6, lines 34 -39, Col. 7, lines 5 -29 and Col. 24, lines 62 -68, where the collision rate exceeds a desire level is considered as the number collision reaches a threshold value, and identifying a congested multiple access so that the traffic may routed to less heavily utilized channel is considered as the subscriber is unable to acquire sufficient bandwidth on the data channel due to collisions with other transmitting subscribers).” This analogy is, however, a mischaracterization of Wright.

Wright is directed towards a dynamic access control method for a multiple access communication network. Wright’s subscriber device wishing to transmit a data packet on the reverse channel receives the broadcast dynamic access control parameter from a base station on the network, generates an access control limit value and only attempts to transmit the data packet if the access control limit value satisfies the received dynamic access control parameter. See Wright, Abstract. In Wright, if a subscriber device wants to transmit data to the base station, then the subscriber device first has to obtain the latest value of Ptx and then transmit the data if certain conditions are satisfied. The value of Ptx is calculated by the base station based on the success and collision rate of a reverse channel. Therefore, in Wright “tracking the number of collisions on a data channel” is done before “the step of transmitting.” In contrast, Applicant’s claim 1 clearly recites “during the step of transmitting, tracking a number of collisions on the data channel.” Therefore, Wright does not show or suggest “...during the step of transmitting, tracking a number of collisions on the data channel...” as recited by Applicant’s claim 1.

The Office Action on pages 3 and 4 further states that “Regarding claim 1... Wright fails to explicitly mention when the number of collisions reaches the threshold value, transmitting a reassignment request to move to a new data channel. However, Taketsugu teaches a method to select a new data channel when the packet collisions exceed a critical value as described the instant application (Fig. 5 and Col. 12, lines 36 - 39,).” This analogy is, however, a mischaracterization of Taketsugu.

Taketsugu also fails to teach or suggest the above limitation. Taketsugu discloses determining whether an error rate in a packet exceeds a threshold value at a base station and if

the error rate exceeds a critical value, the base station sends a “select new channel signal” to the subscribers. See Taketsugu, col. 5, lines 1-3 and col. 12, lines 36-39.

Further, the Office Action on pages 3-5 states that “Regarding claim 1... Wright in combination with Taketsugu differs from the instant invention by teaching the above steps have done in the base station instead of the subscriber. However, Li teaches method where a subscriber measures channel and interference information subcarriers based these measurements the subscriber selects a set of channel to communicate with the base station (Col. 2, lines 12 - 19). This is substantially the same function as discloses by the instant application.” This analogy is also a mischaracterization.

Li teaches measurement of channel and interference information (for example, SINR) by a subscriber for each subcarrier pilot symbol periods and data traffic periods. Li, at best, teaches monitoring the reception of the pilot symbols periods and data traffic periods and measuring the inter-cell and intra-cell interference of each subcarrier cluster. First of all, Li does not teach measuring a number of collisions, Li teaches measuring SINR. Further, Li does not teach measuring SINR during the step of transmitting. Li teaches measuring interference before the step of transmitting. See Li, col. 2, lines 12-19 and col. 5, line 53 - col. 6, line 33. Therefore, Li does not overcome the deficiencies of Wright and Taketsugu. And the combination of Wright, Taketsugu, and Li does not teach “at a subscriber... during the step of transmitting, tracking a number of collisions on the data channel...” as recited by Applicant’s claim 1.

Moreover, Li teaches that a subscriber reports the SINR value for each subcarrier cluster to the base station. Then the base station selects one or more clusters for the subscriber based on this feedback and additional information available at the base station. The base station communicates the selected cluster to the subscriber. Li further teaches that from time to time the subscriber can report its updated clusters selection and it’s associated SINRs to the base station. In response, the base station performs reselection and informs the subscriber about the new cluster allocation. However, Li’s subscriber’s reporting its updated clusters selection and its associated SINRs to the base station occur as a result of subscriber movement or change in interference. See Li, col. 6, lines 55-67. Whereas, Applicant’s transmitting a re-assignment request occurs when the number of collisions reaches a threshold value. None of the references show or suggest transmitting a re-assignment request or reporting the updated cluster selection when the number of collisions reaches a threshold value. Therefore, the combination of Wright,

Taketsugu, and Li does not teach “at a subscriber... when the number of collisions reaches the threshold value, transmitting a reassignment request to move to a new data channel” as recited by Applicant’s claim 1.

For the above reasons, Applicant submits that independent claim 1 is not obvious in view of the combination of Wright, Taketsugu, and Li and therefore that the rejection of claim 1 under 35 USC 103(a) should be withdrawn. Applicant requests that claim 1 now be passed to allowance.

Dependent claims 2-4 depend from, and include all the limitations of independent claim 1. Therefore, Applicant respectfully requests the reconsideration of dependent claims 2-4 and requests withdrawal of the rejection.

Rejection of Claims 5, 6, 10, 11, and 14 under 35 U.S.C. § 103(a) as being unpatentable over US 6078568 (Wright) in view of US 5740167 (Taketsugu) and further in view of US 6947748 (Li) and US 6222850 (Johnson)

Applicant has cancelled claims 10, 11, and 14. Therefore, the rejection of claims 10, 11, and 14 is moot in view of the cancellation.

As mentioned above, Applicant respectfully submits that Wright, Taketsugu, and Li do not disclose “at a subscriber... during the step of transmitting, tracking a number of collisions on the data channel...” and “at a subscriber... when the number of collisions reaches the threshold value, transmitting a reassignment request to move to a new data channel.” Johnson fails to overcome the deficiency of Wright, Taketsugu, and Li in that Johnson also does not show or suggest the above-mentioned limitation.

Johnson describes a method for calculating the percentage of data packets that were transmitted with collisions over a defined time interval, typically 4 seconds. See Johnson, col. 4, lines 62-64. Applicant’s dependent claims 5 and 6 provide further limitations to the threshold value recited in independent claim 1. Johnson does not disclose tracking the number of collisions until the number of collisions reaches a threshold value. Instead, Johnson discloses calculating the number of collisions over a time interval. Thus, Johnson fails to disclose such limitations.

None of the cited references taken individually or in combination teach or suggest that which is claimed by Applicant’s invention. Claims 5 and 6 depend on what are believed to be allowable independent claim 1 and thus are in condition for allowance. Reconsideration and

withdrawal of the rejection of claim 5 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Wright in view of Taketsugu and further in view of Li and Johnson is respectfully requested.

### Conclusion

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. Such action is earnestly solicited by the Applicant. Should the Examiner have any questions, comments, or suggestions, the Examiner is invited to contact the Applicant's attorney or agent at the telephone number indicated below.

Please charge any fees that may be due to Deposit Account 502117, Motorola, Inc.

Respectfully submitted,

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